IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1924 of 2003

in

SPECIAL CIVIL APPLICATIONNo 280 of 2003

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJENDRAKUMAR A PARMAR C/O.SANTOSH DUGARAM GONDKAR

Versus

L.N.PATEL JOINT SECRETARY G.P.S.C.

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Appearance:

1. Misc.Civil Application No. 1924 of 2003
MR MUKUL SINHA for Petitioner No. 1
MR SK PATEL for Respondent No. 1
MR NIKHILESH J SHAH for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

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CORAM : HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 28/10/2004

ORAL JUDGEMENT

(Per : HON'BLE DR.JUSTICE J.N.BHATT)

By this petition, the grievance, which is voiced is that, the respondent nos.1 and 2, who are Joint Secretary and Chairman of the Gujarat Public Service Commission ("GPSC") respectively, are guilty of committing Contempt of this Court, as they have, willfully, and, deliberately, disobeyed the direction of the Learned Single Judge contained in a judgment rendered on 26/2/2003 in Special Civil Application No.280/03 and, therefore, initiation of proceedings for Contempt is prayed for, against the respondents. We have heard, the Learned Advocates, appearing for the parties. We have, also, dispassionately examined the factual profile, emerging from the record of the Contempt Application, and considered the relevant proposition of law.

2. In support of this application for Contempt, in the course of the submissions before us, Learned Counsel Dr.Mukul Sinha, has placed strong emphasis on the observations and directions contained, in para 30, of the judgment of the Learned Single Judge. We have given, our serious thoughts and considerations to the observations and the directions contained in para 30. However, in order to precisely appreciate the proposition sought to be carved out from para 30, to reinforce the submission of Learned Advocate Dr.Mukul Sinha, we deem it expedient to reproduce the said paragraph in its entirety, which reads here as under:

"In view of the aforesaid discussion, I find that even if it is accepted that scaling is one of the modern methods of assessing the comparative merit and even if it is accepted that there is power with the GPSC to take decision of applying the modern method for assessing the comparative merit, the facts of the present case show that the formula applied by the GPSC for scaling is for different purpose which is not warranted in law and even the formula applied is also in part and that too is without proper application of mind and without there being requisite material of difference in the marking system by the examiner and difference of complexity of

subjects.

In view of the aforesaid discussions, I find that the formula of scaling applied by the GPSC upon the raw marking deserves to be quashed and set aside and hereby quashed and set aside."

3. The learned Advocates appearing for the respondent have countenanced the submission and the proposition sought to be interpreted in support of this application for Contempt, and have, forcefully, and strongly, placed reliance on the affidavit-in-reply, as well as, the direction given by the Learned Single Judge. In the mean time, while summing up para 34 (C), we deem it also necessary to appreciate and examine the rival contention to reproduce the said direction, which reads here as under:

"It is further clarified and ordered that the GPSC shall not be required to conduct the main examination again but shall consider the matter afresh keeping in view the discussion and the observations of this Court in this judgment and it will be at liberty to declare the result of the main examination on the basis of raw marks or to apply the method of moderation and scaling after consulting the experts and shall declare the result thereafter in either case. In any event, such exercise of declaration of result shall be completed by the GPSC as early as possible, and in any case, before the expiry of a period of four months from the date of receipt of writ of this Court."

4. We have also examined and evaluated, for the limited purpose of appreciation of the merits of allegation of Contempt of having been committed, the Report of the Expert Committee, on the basis of which the respondent-Gujarat Public Service Commission declared the results of the candidates. We have, also examined, the statement showing the differences in total marks of both the results i.e. the result dated 18/12/2002 and result dated 20/8/2003 based on the formula, opinion and recommendations of the Expert Committee.

5. It has been, clearly, and, unequivocally, refuted in the affidavit-in-reply, on behalf of the Gujarat Public Service Commission, the alleged act of Contempt of Court and disobedience of the direction, contained in the judgment of the Learned Single Judge. It appears, apparently, from the record that, the respondent-GPSC has

in pursuance of the directions of the learned Single Judge and for the purpose of complying the said directions of the learned Single Judge contacted many expert persons and academicians who are expert in the field of not only academics but also in scaling methodology. In pursuance of the compliance of the direction, a Committee of Experts came to be constituted for the purpose of consideration of the best method and formula, so as to, enable the Gujarat Public Service Commission to declare the results of the candidates on the objective basis.

6. The Expert Committee Report, upon consideration of all the facts and circumstances, including the number of question papers, compulsory, as well as, optional, and the common syllabus meant for the candidates in the recruitment examination of Class I and Class II services, reached to a considered opinion that, the formula used by the Commission for scaling the raw-marks, in motion of the optional subjects, has been quite reasonable and in case of subjects, if raw-marks do not follow normal distribution, a preliminary scaling, to bring normality into the distribution and advise for Z-score for the purpose of utilisation and implementing scaling formula with a view to arrive at a scaled mark in the subject, for the said examination. Not only that the statement showing the differences in total marks of both results, one dated 18/12/2002, which was not upheld by the Court and the second result dated 20th August, 2003 based upon the report of the Expert Committee would leave any manner of doubt that, the attempt on the part of the Respondent Authority-GPSC has been to see that the direction contained in the judgment of the Learned Single Judge are observed in due spirit and later.

7. In view of the provisions of Section 2 (b), Civil Contempt means, willfully disobedience to any judgment, decree, direction, order , writ or other process of the Court, or willfully, breach of or undertaking given to accord. In the present case the allegation is of willful disobedience of the direction contained in the judgment of the Learned Single Judge. It is quite evident from the definition of the correlation of Civil Contempt that, they must, first, prove disobedience on the part of the alleged contemnor, and, secondly, such a disobedience must be attributed to the willfulness. Both these conditions must coexist, so as to, constitute a Civil Contempt. Mere allegation of phraseology or words expressed or made in the provision would not entail any in result. It is to be shown to the satisfaction of the Court without any doubt.

8. After having given our anxious consideration to the entire factual profile, the catalogue of the circumstances, the type and the nature of the directions, the follow-up action taken by the respondent-GPSC and the affidavit-in-reply, we have no hesitation in finding that there is no disobedience as such, much less deliberate or willful. We are, therefore, constrained to observe that the potent weapon of contempt is envisaged and designed to see that the dignity, the decorum and decency of the Administration of Justice is maintained and no person can be allowed to transgress or disobey the directions or any part of the judgment or decree or order and for that purpose, even the process of the Court. Unfortunately, we have one imprint in our mind, after having undergone the full requisite juristic exercise of examining the merits of the application for Contempt of Court that, the petitioner has made futile attempt to make use of a very potent weapon in the armory of the Administration of Justice without serious consideration. It is, therefore, necessary for us to pass directions for payment of costs, while dismissing this application for Contempt being totally baseless and meritless. Accordingly, this application is rejected. We would have awarded the costs of Rs.2500/- but for position of the petitioner. We, therefore, leave parties to bear costs. Notice shall stand discharged.

(DR. J. N. Bhatt, J.)

(Anant S. Dave, J.)
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